

NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

RAYMOND SKELTON on behalf of :
himself and all other similarly situated :
persons, :

Plaintiff :

v. :

NEW JERSEY DEP'T OF CORR., :
et al., :

Defendants :

CIV. NO. 19-18597 (RMB)

ORDER

This matter comes before the Court upon the parties' responses (Plaintiff's Letter Brief, Docket No. 35; Defendants New Jersey Department of Corrections, Marcus O. Hicks and John Powell's Letter Brief, Docket No. 36) to this Court's June 14, 2022 Notice of Call for Dismissal. For the reasons discussed below, this Court will dismiss the amended complaint without prejudice for failure to timely serve the amended complaint on the remaining defendants.

I. PROCEDURAL HISTORY

On October 2, 2019, Plaintiff filed this putative class action against the New Jersey Department of Corrections, Marcus O. Hicks, John Powell and a number of John and Jane Doe Defendants (collectively "the NJ DOC Defendants") alleging:

All inmates incarcerated in prisons under the direction of the NJDOC who were provided a diet which was

inadequate to maintain normal health. A further subclass is those inmates incarcerated in prisons under the direct supervision of the NJDOC who were not provided a diet commensurate with medically documented special needs.

(Compl., Docket No. 1 at 2, ¶ 3.) Summons were returned as executed in November 2019, as to the New Jersey Department of Corrections, Marcus O. Hicks and John Powell (collectively "the NJ DOC Defendants") (Docket Nos. 3, 4, 5.) On March 6, 2020, the NJ DOC Defendants filed their first motion to dismiss, which this Court granted on October 30, 2020, and also granted Plaintiff leave to file an amended complaint within 30 days. (NJ DOC Defendants' Mot. to Dismiss, Docket No. 14; Order, Docket No. 22.)

After Plaintiff failed to take any action, on June 25, 2021, this Court issued an order for Plaintiff to show cause why this case should not be dismissed for failure to prosecute. (Order, Docket No. 23.) Plaintiff responded, and the Court directed Plaintiff to file an amended complaint. (Order, Docket No. 27.) On October 28, 2021, Plaintiff filed an amended complaint, which named only John and Jane Doe defendants. (Am. Compl., Docket No. 33.) On June 14, 2022, after Plaintiff failed to take any action to identify the John and Jane Doe Defendants and amend the complaint, this Court filed a Notice of Call for Dismissal pursuant to Federal Rule of Civil Procedure 4(m). (Notice of Call for Dismissal, Docket No. 34) On June 24, 2022, Plaintiff filed a response to the Notice of Call for Dismissal, explaining that Plaintiff must identify the unnamed defendants prior to filing and serving a second amended complaint. (Pl's Response to Notice of Call for Dismissal, Docket No. 35.) Deputy

Attorney General Daniel S. Shehata, who represented the NJ DOC Defendants in this action prior to dismissal of the claims against them, filed a reply to Plaintiff's response, noting that he does not represent any of the Doe Defendants; therefore, the amended complaint has not been served through him.

This Court will vacate the Notice of Call for Dismissal. Plaintiff shall immediately take steps to identify the Doe Defendants. If Plaintiff has not identified any Doe Defendants and filed a second amended complaint identifying those defendant[s] within 60 days from the date of entry of this Order, this Court will dismiss this action for failure to prosecute, pursuant to Federal Rule of Civil Procedure 41(b).

IT IS therefore on this 11th day of August 2022,
ORDERED that the Notice of Call for Dismissal (Docket No. 34) is
VACATED; and it is further

ORDERED that this Court will dismiss this action for failure to prosecute, pursuant to Federal Rule of Civil Procedure 41(b), if Plaintiff has not identified any Doe Defendants and filed a second amended complaint identifying those defendants within 60 days from the date of entry of this Order.

s/Renée Marie Bumb
RENÉE MARIE BUMB
United States District Judge